

April 1965

Book Reviews

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Recommended Citation

John A. Appleman, *Book Reviews*, 42 Chi.-Kent L. Rev. 98 (1965).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol42/iss1/11>

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BOOK REVIEWS

CONTROL OF HIGHWAY ACCESS. Ross D. Netherton. Madison, Wisc: University of Wisconsin Press, 1963. Pp. xxvi, 518.

Both the author's preface and the foreword by J.H. Beuscher, Professor of Law at the University of Wisconsin, under whose general supervision this study was made, designate this book as an effort to fill a void in the published literature on legal problems, an objective which is laudable and probably long overdue. It does not deal with any recognized "field" of law in terms of traditional classifications; more nearly, it appears to be a first tentative step in staking out a new topic in the systematization of the law.

Its early chapters are devoted to a development of the historical background of present highway law with particular emphasis on the reciprocal servitudes existing between the highway and the abutting private property, a concept which has expanded with population growth and public demand. This development ultimately focuses on the modern recognition of access rights, not only in a literal sense, but also access to the general highway system and the uncertain right to an advantageous location relative to the main stream of traffic.

Proceeding in a parallel fashion, the author outlines the transition from horse and buggy days, when a road was just a road, to the present complex grid of highways in which one road is but a part of the overall system and can be viewed only in its relation to the whole. In other words, there has been a division of labor, so to speak—individual roads have become specialized in their use and each one must be designed so that it integrates efficiently into the entire system.

It is this clash between the rights of the abutting and adjacent land-owners and the needs of the public for a safe and efficient highway system, as it may be enhanced by limiting and controlling access, that is the theme and occasion for this tome.

Thereafter, the author proceeds to consider the legal powers available to achieve access control and the advantages and disadvantages of each. This examination is not limited simply to physical control of entry to the highway, but also suggests and evaluates the possibility of partially solving this problem by land use controls with the traffic generating capacities of various uses as a frame of reference. Placed under close scrutiny are the police power, the law of nuisance, taxation, highway planning with respect to new locations, and purchase, either by negotiation, or eminent domain with its concomitant problems of valuation. The book, is then brought to a close by the inclusion of a Model Controlled-Access Highway Act, a rather extensive glossary, diagrams of the physical layout in some of the leading access control cases, and footnotes without end—ninety-eight pages to be exact.

One cannot read very far in this book without being impressed with

the tremendous amount of research that went into its preparation. It is probably the most complete exposition of the topic which is presently available and is technically competent in the judgment of this writer. Nevertheless, it is not a book which is easily read; it is tedious, sometimes trite in its details, and not uncommonly an excellent background development is enervated by a failure to achieve any genuinely definitive conclusions. It is not recommended reading for recreation or general self-improvement. However, for someone with a specific problem at hand, it should prove to be an excellent reference, both for its own content and its indication of additional source materials not otherwise collected in one place.

J. K. MARSHALL

DALLAS JUSTICE

THE REAL STORY OF JACK RUBY AND HIS TRIAL by Melvin M. Belli,
David McKay Company, Inc., 1964, \$5.50.

Books about trials are a little like a Hollywood sex symbol describing her sex conduct with her ex-husband and good friends. The other parties involved are somewhat helpless to speak for themselves unless they, in turn, write books relating their parts in the orgy (courtroom or bedroom), perhaps from a different perspective. And often the bare testimony, cast in naked words, is inadequate to present a total point of view.

Ordinarily, lawyers do not speak or write of their cases pending on appeal. True, this is no longer Mr. Belli's case, so that such restraint doubtless is inapplicable. But the rule is a wise one, in all events. And, although the subject is timely and interesting, it might have been better had the book been published after litigation had terminated and from a more dispassionate and objective point of view.

In some respects, this book is reminiscent of Reel, *The Case of General Yamashita*. In that case, the author, who defended General Yamashita in his war crimes trial, was bitterly critical of the tribunal and of its procedures. Whether accurate or not, that attorney staked his entire defense upon what I believe was a misconception of the law. And he lost!

Mr. Belli made no such mistakes. His procedures, it can be stated, were letter perfect. Whatever else may be said, this man is a superlative trial lawyer. But the same rancor is there. And it is not difficult to understand.

Mr. Belli is a compassionate and courageous person. He was profoundly affected by what he considered to be injustices in the procedures—the denial of the change in venue, the almost prohibitive restraint upon jury interrogation, the failure to limit prosecution comments and argument, and rulings upon scientific evidence. These shortcomings merit criticism, but they do not justify some of the personalities found in the book.

This is the first time in history that a trial has been surrounded with the problems which confronted defense counsel here. Obviously, it would

be impossible to find jurors who were ignorant of the event which constituted the crime alleged. Of course, if one elects to commit homicide in front of a nationwide audience, watching on television, the actor is not in a very good position to insist that all such persons are automatically disqualified to serve as jurors. Defense counsel are then saddled with the tremendous burden of being compelled to admit the performance of the act charged, and to explain that only a man mentally afflicted would perform in this manner. And, in this situation, the wealth of scientific and medical evidence produced by the defense was impressive.

The text is interestingly written. A story about a trial as fascinating as the Ruby case, told by a participating advocate, merits purchase. One will enjoy it, whether in agreement upon all facets or not. The book does point up one great need of which all trial counsel are aware. That is, the almost insurmountable task facing the trial lawyer when lurid newspaper stories appear before and at the time of trial. The American Press refuses to police itself. In England, we are told, news stories await, ordinarily, the termination of the court controversy. Some study should be made of the problem in this nation where active newspaper publicity helps to convict a man prior to trial—and, in a number of cases, has helped to send innocent men to their deaths.* If this book precipitates a study of this problem, whether it helps Jack Ruby or not, it will have served a purpose of value.

As an advocate, this reviewer was disappointed in the fact that the book was directed more toward the human interest aspects of the trial than the technical. In following the daily procedures, it became apparent that the trial was crammed with reversible error before the jury selection had even been completed. Almost every question which sought to elicit the state of mind of the jurors met automatic objection from the prosecution, with such objections being sustained almost routinely. As an illustration, when defense counsel sought to learn from the jurors whether they felt the City of Dallas was on trial, which attitude was of tremendous importance to ascertain—wham, objection sustained! Yet, in the closing argument of the prosecution, it was pounded home that the eyes of the world were upon Dallas which was, itself, on trial. The very danger which the defense had made manifest from the opening of the case was there dramatically illustrated.

This will be a controversial book. That is a good thing. We have too many conformists in this age; we need some nonconformists, some dissenters—although not of the Jack Ruby type. But, at least, advocates to defend them, with courage to speak heatedly upon unpopular subjects, to take issue with jurists and with leaders of the bar, and to yell from the rooftops if they feel this is necessary in the interests of justice. Whenever steps are taken to withdraw the red blood from the veins of advocates, and to replace it with milk, God help the courts in America!

JOHN ALAN APPLEMAN

* Borchard, *Convicting the Innocent*; Frank, *Not Guilty*.